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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/246,612	02/08/1999	JAMES MCCORMICK	1400.9801020	6382
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ROSS D. SNYDER & ASSOCIATES, INC. 115 WILD BASIN RD. SUITE 107 AUSTIN, TX 78746			TANG, KENNETH	
			ART UNIT	PAPER NUMBER
			2127	

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/246,612	MCCORMICK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kenneth Tang	2127	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 August 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-39 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. This action is in response to the Request for Consideration on 8/30/04. Applicant's arguments have been fully considered but were not found to be persuasive.
2. Claims 1-39 are presented for examination.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1-8, 14-18, 22-27, 32-36, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehi et al. (hereinafter Gehi) (US 6,134,216) in view of IBM Technical Disclosure (Vol. 34, No. 9, February 1992).**
2. As to claim 1 Gehi discloses a method consisting of the following:
  - receiving plurality of call signaling messages (*call signaling messages, col 2, lines 47-51, "message processor", Fig. 1, item 10*);
  - Comparing queue occupancy level with first threshold (*S(n) compared against threshold X[max,I], col 4, lines 24-49, "overload is measured through the use of a control parameter such as the occupancy of a control processor or the number of entries in a queue of a module of the system", see Abstract*);

- When occupancy level compares unfavorably with threshold, enqueue call signaling messages into processing queue based on type of call signaling messages (*level is changed to be at level (i+1) over the upcoming interval, col 4, lines 24-49*);
- Call processing (“call processor”, *Fig 1, 20, and processor, col 8, lines 28-57*);
- Processing module (*modules, processor, col 9, lines 20-30, “network module”, Fig. 1, item 30*).

However, Gehi fails to explicitly teach enqueueing the messages based on its type. IBM teaches a message queue communication system having messages enqueued based on their type (“*enqueued message types*” and “*message of the corresponding type to be enqueued*”, *page 170, paragraph 2*). It would have been obvious to one ordinary skill in the art at the time the invention was made to include the feature of enqueueing call signaling messages based on its type to the existing enqueueing system of Gehi in order to increase selectivity (select() and blocking) of the contents in the processing queue (*page 168*).

3. As to claim 2, Gehi in view of IBM fails to explicitly teach using dispensable and indispensable as type of call signaling messages. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a dispensable type of message to the existing system of Gehi and IBM for the reason of maximizing the communication efficiency by minimizing wasteful communication resources.

4. As to claims 3, Gehi in view of IBM fails to explicitly teach the following:

Art Unit: 2127

- a) when message is dispensable, delete the previous dispensable message;
- b) enqueueing new message when previous one is deleted;
- c) enqueueing message into queue when message is indispensable.

5. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a) and b) to the existing system of Gehi and IBM for the reason of deleting the old values and adding the new values to the queue for updating/cleanup reasons. In addition it would have been obvious to one of ordinary skill in the art at the time the invention was made to include c) to the existing system of Gehi and IBM for the reason of replacing the dispensable messages with indispensable ones.

6. As to claim 4, Gehi in view of IBM fails to explicitly teach dropping the call signaling message if the previous dispensable one does not exist. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature to the existing system of Gehi and IBM for the reason of increasing efficiency by removing wasteful resource material.

7. As to claim 5, Gehi in view of IBM discloses a method consisting of the following:

- Comparing queue occupancy level with second threshold (*compared against threshold X[min,I], col 4, lines 24-49*);
- When occupancy level compares unfavorably with threshold, dequeue call signaling messages into processing queue based on type of call signaling messages (*level is changed to be at level (I-1) over the upcoming interval, col 4*,

*lines 24-49, “overload is measured through the use of a control parameter such as the occupancy of a control processor or the number of entries in a queue of a module of the system”, see Abstract)).*

8. Gehi in view of IBM fails to explicitly teach the following:
  - a) when message is dispensable, delete the previous dispensable message;
  - b) enqueueing new message when previous one is deleted;
9. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a) and b) to the existing system of Gehi and IBM for the reason of deleting the old values and adding new values to the queue for updating/cleanup of the queue.
10. As to claim 6, it is rejected for the same reasons as stated in the rejection of claim 4.
11. As to claim 7, it is rejected for the same reasons as stated in the rejection of claim 3.
12. As to claim 8, it is rejected for the same reasons as stated in the rejection of claim 4.
13. As to claim 14, it is rejected for the same reasons as stated in the rejection of claim 1.
14. As to claim 15, it is rejected for the same reasons as stated in the rejection of claim 2.
15. As to claim 16, it is rejected for the same reasons as stated in the rejection of claim 3.

Art Unit: 2127

16. As to claim 17, it is rejected for the same reasons as stated in the rejection of claim 5.

17. As to claim 18, Gehi in view of IBM fails to explicitly teach dropping the call signaling message if the previous dispensable one does not exist. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature to the existing system of Gehi and IBM for the reason of increasing efficiency by removing wasteful resource material. In addition, Gehi in view of IBM fails to explicitly teach enqueueing the message when the previously indispensable one is deleted. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the feature of enqueueing the new message for the reason of adding the new values to the queue for updating reasons.

18. As to claim 22, it is rejected for the same reasons as stated in the rejection of claim 1.

19. As to claim 23, it is rejected for the same reasons as stated in the rejection of claim 2.

20. As to claim 24, it is rejected for the same reasons as stated in the rejection of claim 3.

21. As to claim 25, it is rejected for the same reasons as stated in the rejection of claim 1.

22. As to claim 26, it is rejected for the same reasons as stated in the rejection of claim 18.

Art Unit: 2127

23. As to claim 27, it is rejected for the same reasons as stated in the rejection of claim 4.
24. As to claim 32, it is rejected for the same reasons as stated in the rejection of claim 1.
25. As to claim 33, it is rejected for the same reasons as stated in the rejection of claim 2.
26. As to claim 34, it is rejected for the same reasons as stated in the rejection of claim 3.
27. As to claim 35, it is rejected for the same reasons as stated in the rejection of claim 5.
28. As to claim 36, it is rejected for the same reasonis as stated in the rejection of claim 3.
29. As to claim 39, Gehi in view of IBM fails to explicitly teach using at least one of FIFO and LIFO. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature to the existing system of Gehi and IBM because it is well-known that a queue can either operate as FIFO or LIFO.
30. **Claims 9-10, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehi (US 6,134,216) in view of IBM, and in further view of Holmes (US 5,999,969).**
31. As to claims 9, Gehi teaches decreasing the overhead level in a queue when appropriate overload control action of each module is needed (see Abstract) Gehi in view of IBM fails to

explicitly teach doing this by dequeuing messages from the call processing queue. Holmes teaches using a message dequeue operation (*col 25, lines 21-25*) with a message queue as a call processing queue (*message queues, col 7, lines 35-37*). However, Holmes fails to explicitly teach doing this in a sustained overloading condition. Moreover, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature to the existing system of Gehi and IBM for the reason of preventing a burst of overhead data and to stay under the switch's capacity (sustaining overload condition).

32. As to claim 10, Gehi in view of IBM fails to explicitly teach using at least one of FIFO and LIFO. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature to the existing system of Gehi and IBM because it is well-known that a queue can either operate as FIFO or LIFO.

33. As to claim 28, Gehi teaches decreasing the overhead level in a queue when appropriate overload control action of each module is needed (see Abstract) Gehi in view of IBM fails to explicitly teach doing this by dequeuing messages from the call processing queue. Holmes teaches using a message dequeue operation (*col 25, lines 21-25*) with a message queue as a call processing queue (*message queues, col 7, lines 35-37*). However, Holmes fails to explicitly teach doing this in a sustained overloading condition. Moreover, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature to the existing system of Gehi and IBM for the reason of preventing a burst of overhead data and to stay under the switch's capacity (sustaining overload condition).

As to claim 31, it is rejected for the same reasons as stated in the rejection of claims 9 and 10.

**34. Claims 11-13, 19-20, 29-30, and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehi in view of IBM in further view of Baldwin (US 6,310,952).**

35. As to claim 11, Gehi and IBM fail to explicitly teach maintaining a plurality of dequeuing lists that track the following:

- locations in the call processing queue;

Baldwin teaches keeping track of that caller's location in a call queue (col 4, lines 62-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature of tracking the location to the existing system of Gehi and IBM for the reasons of having a "pointer" in the queue so comparisons can be made towards the threshold to determine when there is sustained overloading.

36. The system of Gehi, IBM and Baldwin fail to teach tracking the following:

- an ordered list of types of calling signaling messages;
- an ordered list of dispensable messages;
- an ordered list of indispensable messages;

37. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include having types of calling signaling messages to the system of Gehi, IBM, and Baldwin for the reason of increasing selectivity of the contents in the processing queue. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the

Art Unit: 2127

invention was made to include a dispensable type of message to the existing system of Gehi and IBM for the reason of maximizing the communication efficiency by minimizing wasteful communication resources. In addition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include indispensable messages for the reason of having more message types for selectivity.

38. As to claim 12, Gehi in view of IBM fails to explicitly teach updating the plurality of dequeuing lists when the enqueueing changes occur. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this updating feature to the existing system of Gehi and IBM for the reason of improving accuracy and organization.

39. As to claim 13, Gehi in view of IBM fails to explicitly teach using at least one of FIFO and LIFO. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature to the existing system of Gehi and IBM because it is well-known that a queue can either operate as FIFO or LIFO.

40. As to claim 19, it is rejected for the same reasons as stated in the rejection of claim 11.

41. As to claim 20, Gehi in view of IBM fails to explicitly teach updating the plurality of dequeuing lists when the enqueueing changes occur. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this updating feature to the existing system of Gehi and IBM for the reason of improving accuracy and organization.

42. As to claim 29, it is rejected for the same reasons as stated in the rejection of claim 11.

43. As to claim 30, Gehi in view of IBM fails to explicitly teach updating the plurality of dequeuing lists when the enqueueing changes occur. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this updating feature to the existing system of Gehi and IBM for the reason of improving accuracy and organization.

44. As to claim 37, it is rejected for the same reasons as stated in the rejection of claim 11.

45. As to claim 38, Gehi in view of IBM fails to explicitly teach updating the plurality of dequeuing lists when the enqueueing changes occur. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this updating feature to the existing system of Gehi and IBM for the reason of improving accuracy and organization.

46. **Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gehi (US 6,134,216) in view of IBM, in further view of Baldwin (US 6,310,952), and in further view of Holmes (US 5,999,969).**

47. As to claim 21, Gehi teaches decreasing the overhead level in a queue when appropriate overload control action of each module is needed (see Abstract) Gehi in view of IBM fails to explicitly teach doing this by dequeuing messages from the call processing queue. Holmes

Art Unit: 2127

teaches using a message dequeue operation (*col 25, lines 21-25*) with a message queue as a call processing queue (*message queues, col 7, lines 35-37*). However, Holmes fails to explicitly teach doing this in a sustained overloading condition. Moreover, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include this feature to the existing system of Gehi and IBM for the reason of preventing a burst of overhead data and to stay under the switch's capacity (sustaining overload condition).

### ***Response to Arguments***

In response, to the arguments that are reiterated from the previously presented arguments, the Applicant is redirected back to the responses of those arguments. Applicant states that the Examiner failed to respond to various arguments in the last response. However, the Examiner respectfully disagrees. The Applicant makes this statement but fails to address which arguments were not responded to. The Examiner has grouped the arguments together because the Applicant copies and pastes the same arguments and repeats them over and over.

48. *Applicant states on page 3, 1<sup>st</sup> paragraph, that he cannot find teachings in the cited portions of Gehi that S(n) and X(n) are queues.*

In response, Gehi teaches using S(n) and X(n) for measurements (*col. 4, lines 1-9*) and that measurement is done through the use of a control parameter such as the occupancy of a control processor or the number of entries in a queue (*see Abstract, lines 1-4*). Therefore, both S(n) and X(n) are queues.

Art Unit: 2127

49. *Applicant argues on page 2, 2<sup>nd</sup> paragraph, that IBM does not teach that the “enqueued message types” and “message of the corresponding type to be enqueue” (page 170, paragraph 2) does not disclose enqueueing the plurality of call signaling messages into the call processing queue based on types of call signaling messages.*

In response, the Examiner respectfully disagrees. The Applicant does not provide any support for this argument and the argument is found to be unpersuasive.

50. *Applicant argues on page 3, 2<sup>nd</sup> paragraph, that there is no evidence in Gehi that supports the increase the selectivity of the contents in the processing system as being a motivation.*

In response, the Examiner respectfully disagrees. IBM teaches that it would increase selectivity (select() and blocking) of the contents in the processing queue (page 168). Gehi and IBM both teach message queues with enqueueing messages, and therefore, are in the same field of endeavor.

51. *Applicant challenges the Examiner’s utilization of Official Noticed that it is common knowledge and well known to have dispensable and indispensable types of messages in queue (page 3, 3<sup>rd</sup> paragraph, page 4, 2<sup>nd</sup> paragraph, page 6, 1<sup>st</sup> paragraph).*

In response, the Examiner has responded to the challenge with introducing Augsteijn et al. (US 4,961,137). Augsteijn teaches a message queue with both garbage (dispensable and wasteful resource material) and non-garbage (indispensable) messages and a garbage collector to get rid of the garbage to increase efficiency (*col. 13, lines 23-31 and Abstract, for example*). It is also inherent that the message can be either dispensable or non-dispensable.

52. *Applicant argues that Gehi fails to disclose comparing and enqueueing as recited.*

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on

Art Unit: 2127

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

53. *Applicant for the first time challenges the Examiner's utilization of Official Notice in that a queue can operate as a FIFO or LIFO is well-known in the art (page 4, last paragraph, page 6, 3<sup>rd</sup> paragraph).*

However, this limitation has been taken as Admitted Prior Art because this is a new argument and the challenge was not made initially after the first office action (see MPEP 2105).

54. *Applicant argues (page 5, 4<sup>th</sup> paragraph, page 8, paragraph 2) that the motivation of preventing a burst of overhead data teaches away from claims directed towards a sustained overloading condition.*

In response, the Examiner respectfully disagrees. Dequeueing a dispensable message when in a sustained overloading condition is helping to prevent a burst of overhead data (overload).

55. *Applicant challenges the Examiner's utilization of Official Noticed that it is common knowledge and well known to update queues (page 6, 2<sup>nd</sup> paragraph, page 7, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> paragraph).*

In response, the Examiner has provided Hagan (US 6,341,301 B1). Hagan teaches updating queues (col. 1, lines 66-67 through col. 2, lines 1-8). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the feature of updating queues to the existing queue system because it would increase the execution speed and memory efficiency (col. 1, lines 66-67 through col. 2, lines 1-8).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Tang whose telephone number is (571) 272-3772. The examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2127

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MENG-AL T. AN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100